

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Amendment of Part 90 of the ) PR Docket No. 93-144  
Commission's Rules to Facilitate ) RM-8117, RM-8030  
Future Development of SMR Systems ) RM-8029  
in the 800 MHz Frequency Band )

To: The Commission

REPLY COMMENTS OF UTC

Pursuant to Section 1.415 of the Commission's Rules, UTC<sup>1/</sup>  
hereby submits its reply comments with respect to the Further  
Notice of Proposed Rulemaking (FNPRM), in PR Docket No. 93-144,  
FCC 94-271, released November 4, 1994, in the above captioned  
matter.<sup>2/</sup>

As the national representative on communications matters for  
the nation's electric, gas, and water utilities, and natural gas  
pipelines, UTC filed comments in this proceeding. UTC's comments  
focused on: the need to revise the inter-category sharing rules  
regarding future SMR access to the Pool and General Category  
channels; the protection of incumbent 800 MHz systems; and the  
development of a competitive SMR market. Below, UTC again  
addresses these issues in the context of the comments filed by  
the various parties in this proceeding.

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<sup>1/</sup> UTC, The Telecommunications Association, was formerly  
known as the Utilities Telecommunications Council.

<sup>2/</sup> The Commission extended the deadline for the filing of  
reply comments in this proceeding to March 1, 1995, by Order, DA  
95-67, released February 18, 1995.

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**I. Future SMR Licensing on Pool and General Category Frequencies Should be Prohibited**

As UTC indicated in its comments, in order to meet their public service obligations a number of utilities and pipelines operate sophisticated conventional and trunked land mobile radio systems in the 800 MHz band on channels allocated to the Industrial/Land Transportation Radio Services.

Today, 800 MHz SMR applicants are eligible for licensing under the FCC's inter-category sharing rules on channels in the Industrial/Land Transportation and Business Categories (collectively, "Pool Channels"). UTC reiterates its support for the Commission's proposal to revise the inter-category sharing rules to prohibit SMR and non-SMR applicants from applying for the same channels in the future. Specifically, the FCC should eliminate inter-category SMR access to Pool Channels. This will establish a clear demarcation between SMR and non-SMR spectrum, and more importantly will eliminate the risk of SMR encroachment on non-auctionable spectrum allocated for internal use private radio systems.

As noted in UTC's comments, the Pool Channels are dedicated for non-commercial internal use by Business and Industrial/Land Transportation licensees such as utilities and pipelines, and their availability for SMR licensees was intended to be on a limited basis only. It is for this reason that UTC opposes

Nextel's proposal to convert the Business Radio portion of the Pool Channels to exclusive use by SMRs.<sup>3/</sup> Nextel's statement that "most Business Radio licensees provide commercial service to third parties on a carrier basis"<sup>4/</sup> is an over generalization, since there are many large businesses that operate purely private- internal use systems on these frequencies.

Further, it ignores the fact that a number of utilities and pipelines have turned to the Business Radio channels in situations where frequencies were not available in the Industrial/Land Transportation Pool. Given existing spectrum crowding and the projected need for more 800 MHz spectrum by utilities and pipelines as well as other Pool eligibles, it is essential that these core industries are assured continued access to spectrum that was allocated to meet their private internal operational requirements.

UTC does not support Motorola's proposal to retain unconditional SMR access to the Pool Channel.<sup>5/</sup> In recommending that the Commission preserve the status quo, Motorola ignores the fact that the FCC's proposal to auction 800 MHz SMR frequencies will dramatically alter the existing channel selection process.

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<sup>3/</sup> Nextel, p. 26.

<sup>4/</sup> Nextel, p. 26.

<sup>5/</sup> Motorola, p. 17.

As frequencies dedicated primarily to non-commercial use, the Pool Channels are not subject to competitive bidding. If these channels remain available to SMR licensees and are not subject to auctions, it will create an artificial demand for the channels by SMR applicants seeking to avoid auctions, which will in turn deplete the availability of these frequencies for use by the non-commercial entities to which the channels were allocated.

UTC renews its recommendation that the FCC eliminate prospective access to 800 MHz "General Category" frequencies by new SMR licensees. As with the Pool Channels, the Commission has determined that these channels are not to be subject to auctions.<sup>6/</sup> Therefore, like the Pool Channels, continued SMR access would encourage a "run" on these channels resulting in a scarcity of frequencies for Private Mobile Radio Services (PMRS). It is for this reason that UTC opposes the recommendation of Motorola and the Personal Communications Industry Association (PCIA) to maintain the existing shared access scheme for the General Category channels.<sup>7/</sup>

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<sup>6/</sup> Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994).

<sup>7/</sup> Motorola, p. 17; and PCIA, p. 16.

Further, UTC adamantly opposes Nextel's suggestion that General Category spectrum should be allocated exclusively to SMR use.<sup>8/</sup> PMRS licensees operate throughout these channels and need the flexibility to expand their systems to meet evolving needs. The General Category channels act as a badly needed "safety valve" for PMRS users that currently suffer serious spectrum congestion problems with no foreseeable relief.

While UTC recommends that the FCC prohibit new SMRs from obtaining licenses in the current General Category channels, UTC recognizes the value of this spectrum in accommodating licensees that are "retuned" from other portions of the 800 MHz band. Accordingly, UTC proposes that the General Category channels be available to relocated SMR licensees that are unable to obtain access to suitable replacement spectrum within the SMR channels.<sup>9/</sup>

## **II. Incumbents Must Be Protected**

As noted in its comments, there are a significant number of utilities and pipelines that have been licensed to operate extensive radio systems on the 800 MHz SMR channels. These systems are integral to the safe and efficient provision of

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<sup>8/</sup> Nextel, p. 26.

<sup>9/</sup> Similarly, UTC would propose that relocated private 800 MHz licensees should first seek access to the Pool channels prior to obtaining access to the General Category frequencies.

utility service to the public. A relocation of these systems would impose significant operational and financial costs on the incumbent utilities and their customers. Additionally, a number of UTC's member companies own and operate SMR systems in these bands. Accordingly, UTC agrees with PCIA's opposition to the adoption of mandatory relocation procedures.<sup>10/</sup>

While UTC agrees that relocation of incumbent systems should be left to marketplace mechanisms, at a minimum, any transition process must ensure that the incumbent licensee be made "whole" both financially and operationally. Nearly all commenters, including Nextel, recognize that incumbent licensees must be provided with fully comparable replacement facilities at the expense of the wide-area SMR licensee.<sup>11/</sup>

UTC also reiterates that the requirements must specify that an incumbent cannot be forced to relocate its facilities more than once. As UTC noted in its comments this issue is raised by the fact that the probable relocation spectrum for incumbents -- the lower 800 MHz SMR channels -- has also been proposed for auctioning by the Commission.

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<sup>10/</sup> PCIA, pp. 10-11.

<sup>11/</sup> Nextel, pp 32-35.

UTC considers Nextel's proposed six-month voluntary negotiation period to be a hollow gesture. Given the large number of licensees that would have to enter into negotiations and the scope of the those negotiations, it is simply unrealistic to have a six month cut-off date. Moreover, under Nextel's proposal some wide-area SMRs could avoid having to engage in any voluntary negotiations since they may not need to relocate any systems during the first six months after license grant. This is particularly true for licensees such as Nextel that already occupy a large swath of channels in the service areas on which they are likely to bid.

Motorola echoes UTC's recommendation that pending a relocation, incumbents should be "grandfathered" with primary licensing rights vis-a-vis new licensees in terms of co-channel interference protection.<sup>12/</sup> Under the rules a new licensee would be required to afford protection to incumbents as provided under § 90.621(b), either by locating its stations at least 113 km (70 mi) from the facilities of any incumbent, or by complying with the co-channel separation standards set forth in the Commission's short spacing rule.

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<sup>12/</sup> Motorola, p. 20.

Commenters agree with UTC that the FCC should adopt provisions that would allow incumbent systems to construct stations anywhere within a defined "protected service area." As Motorola points out this would allow incumbents to establish "fill-in" base stations within a defined area without requiring prior FCC approval.

### **III. Wide-Area Licensees Should Not Be Eligible For More Than Two 50 Channel Blocks In The Same Geographic Markets**

After reviewing the record in this proceeding, UTC concurs with those commenters who argue that the Commission's proposals would allow for undue market dominance by a few monolithic carriers. UTC agrees with Southern Company that the development of a competitive wide-area SMR market requires that there be a limit on the number of frequency blocks that a single entity can hold in a given geographic market.<sup>13/</sup> UTC recommends that a single entity be limited to two 50-channel blocks per geographic licensing area. In this way there will be some assurance that SMR customers will continue to have some choice in their selection of service providers.

Whether it is called "enhanced," "wide-area" or "local" the unifying aspect of the service is that it is intended as a "specialized" mobile radio service developed specifically to meet

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<sup>13/</sup> Southern, p. 15.



the unique operational needs of its customers. UTC has serious concerns that the use of MTAs for the licensing of wide-area SMR service will dilute the emphasis on the provision of specialized services in order to concentrate on plain vanilla common carrier services.

#### **IV. Conclusion**

UTC reiterates its recommendation that the Commission revise the inter-category sharing rules to prohibit future SMR access to the Pool and General Category channels. This will eliminate the risk of SMR encroachment on non-auctionable spectrum allocated for internal use private radio systems.

The relocation of incumbent systems should be left to the marketplace through purely voluntary negotiations between the parties. In addition, the requirements should specify that an incumbent cannot be forced to relocate its facilities more than once.

Finally, in order to ensure the benefits of competition within all geographic markets, an entity should be restricted from holding more than two 50 channel licenses for a specific geographic area.

WHEREFORE, THE PREMISES CONSIDERED, UTC respectfully requests the Commission to take action consistent with the views expressed herein.

Respectfully submitted,

UTC, The Telecommunications  
Association

By:

  
\_\_\_\_\_  
Jeffrey L. Sheldon  
General Counsel

By:

  
\_\_\_\_\_  
Sean A. Stokes  
Senior Staff Attorney

UTC  
1140 Connecticut Avenue, N.W.  
Suite 1140  
Washington, D.C. 20036  
  
(202) 872-0030

March 1, 1995